## **EXHIBIT 4**

1 (Pages 1 to 4)

1	UNITED STATES DISTRICT COURT	1 APPEARANCES
2	FOR THE EASTERN DISTRICT OF VIRGINIA	2
3	Richmond Division	3 ON BEHALF OF PLAINTIFF:
4	X	4 JENNIFER A. ALBERT, ESQUIRE
5	ePLUS, iNC.,	5 SCOTT L. ROBERTSON, ESQUIRE
6	Plaintiff, )	6 GOODWIN PROCTER, LLP
7	v. ) Civil Action No.	7 901 New York Avenue, Northwest
8	LAWSON SOFTWARE, INC., ) 3:09-cv-620(REP)	8 Washington, DC 20001
9	Defendant. )	9 Telephone: (202) 346-4000
10	X	10
11		11 ON BEHALF OF DEFENDANT:
12	VIDEOTAPED DEPOSITION OF	12 KIRSTIN L. STOLL-DEBELL, ESQUIRE
13	MICHAEL IAN SHAMOS, Ph.D., J.D.	13 MERCHANT & GOULD
14	Washington, DC	14 Suite 1950
15	Wednesday, June 16, 2010	15 1050 Seventeenth Street
16	10:06 a.m.	16 Denver, Colorado 80265
17		17 Telephone: (303) 357-1670
18 19		18
20	Job No.: 1-181012	19 ALSO PRESENT:
$\begin{vmatrix} 20 \\ 21 \end{vmatrix}$	Pages 1 - 252	20 Akim Graham, Videographer 21
22	Reported By: Joan V. Cain	22
	reported by: voun v. cum	
	2	
		4
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1 pages 26 through 27. There you state, "I adopt the

- 2 prior art citations from Lawson's interrogatories,
- 3 but I do not necessarily adopt the opinions
- 4 expressed in the interrogatories concerning which
- 5 claims are invalid in light of which references."
- 6 Do you see that?
- 7 A Yes.
- 8 Q So you disagreed with some of the Lawson
- 9 attorneys' contentions --
- 10 **A Yes.**
- 11 Q -- with respect to the prior art?
- 12 A Yes, I did, and where I disagreed, I mean I
- 13 indicated that, and my opinion, at least with
- 14 respect to my opinion supersedes what was in the
- 15 interrogatories.
- Q For what specific prior art references did
- you disagree with Lawson's attorneys' contentions?
   A I don't recall. We can go through the
- 19 spreadsheet and see where they say it's invalid and 19
- 20 -- or they say this element is present and I didn't
- 21 find it, we should be able to tell.
- Q Can you refer to paragraph 105 on page 27?

1 in this case?

2 A No. I think I've -- I think I testified 3 that I haven't talked to anybody in the world about 4 this case other than counsel.

- Q So -- let's see. So is it true then that the only persons that you've spoken to about the accused Lawson systems are the accused infringer's
- 9 A Yes.

lawyers; is that correct?

- 10 Q How could any of these systems that you 11 rely on that you indicate predate 1994 be considered 12 suitable noninfringing alternative technologies for 13 Lawson's current systems?
  - A Well, because -- let's suppose a prior art reference is raised for invalidity purposes and it fails. Well, if it fails, then the claims of the patent don't read on it; therefore, it's a noninfringing alternative, and if it were adopted by Lawson, then it would convert the infringing system into a noninfringing one.
  - Q Do you know of any Lawson customer that would agree to allow Lawson to replace its version 9

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A Yes.

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- 2 Q There you state that, "Although the
- 3 identified art is cited herein as relevant to
- 4 invalidity, the fact that these systems existed in
- 5 the prior art may well be relevant to the case in
- 6 other ways. For example, the existence of
- 7 non-infringing alternatives may be relevant to
- 8 damages. I do not opine on these other potential
- 9 grounds for relevance, but understand my analysis of
- 10 the prior art may be used for other purposes."
- 11 What have the attorn- -- attorneys told you
- 12 with respect to how your invalidity opinions may be
- 13 used for other purposes?
- ${f 14}$  A I don't think that they've told me anything
- 15 specifically, but -- but it often occurs in patent
- 16 cases where there will be a damages expert and a
- 17 damages expert will want to base a damages theory or
- 18 damages calculation on something that the technical
- 19 expert has opined to, and I would accept that might
- 20 happen, but I -- I don't think I've been instructed
- 21 specifically that it will.
- 22 Q Have you talked to Lawson's damages expert

1 Lawson system with a pre-1994 system?

- A Well, I don't think I'm talking about wholesale replacement with a pre-1994 system. I'm
- 4 talking about replacing allegedly -- all Lawson
- 5 would have to do is replace one allegedly infringing
- 6 element with a noninfringing element to avoid
   7 infringement, and it's possible that such elements
  - may exist.
- 9 Q Well, you, sir, as a computer scientist,
- 10 would you be willing now in 2010 to replace your
- 11 2010 system with a system that predates 1994?
- 12 A But that's exactly what I said I wasn't
- 13 offering an opinion to. What I said was not to
- replace the entire Lawson version 9 system with some pre-1994 system, but to replace a single allegedly
- pre-1994 system, but to replace a single allegedly
   infringing element with a pre-1994 element that
- 17 performed a similar function. There's plenty of
- 18 software that I use every day that was written long
- before 1994. Not everything becomes obsolete.
   Q Do you know of any Lawson customer who
- 21 would be willing to replace a graphical user
- 22 interface with a green screen?

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45 (Pages 177 to 180)

177 179 1 MS. STOLL-DEBELL: Objection, form. anticipation opinions. 2 THE WITNESS: I -- I -- I don't -- I don't 2 A I confirm that. 3 suppose I do know, but I never said -- I never 3 And nor have you opined that these systems 4 suggested that that was a possibility. 4 render any of the asserted claims obvious when 5 5 BY MS. ALBERT: combined with any of the systems cited in your chart 6 6 Q Do you know of any Lawson customer who on pages 25 through 26; is that correct? 7 would be willing to replace a system with keyword 7 A Not expressly. I haven't made any express 8 8 search functionality for one without? obviousness combinations that include the art 9 A Well, we can go on all day and you can list 9 discussed in paragraphs 107 to 116. On the other 10 elements that are not in the asserted claims. Maybe 10 hand, that wouldn't preclude a KSR argument. 11 we want to concentrate on the stuff that's in the 11 Q What do you mean by a KSR argument? 12 12 asserted claims. No, I -- if -- if keyword -- if A Well, after KSR when the Supreme Court 13 keyword search -- I -- with respect to noninfringing 13 found that express teachings to combine were not 14 alternatives, they have to be commercially 14 necessary and that the -- they looked more 15 acceptable, and so there -- whatever the proposed 15 perceptively at what would be within the skill of 16 replacement would be, one would have to do an 16 one of ordinary skill in the art, looking at the 17 investigation of whether it was commercially 17 progress of the prior art and its apparent 18 acceptable to do it. There are some substitutions I 18 direction, reducing certain design choices to a 19 can imagine would be and some I imagine would be 19 small finite number of choices, et cetera, all 20 ludicrous and wouldn't be. 20 result in obvious inventions as opposed to in Q Do you know -- do you know if Lawson has 21 21 earlier days they might not have been regarded as 22 performed any investigation relating to whether any 22 obvious. 178 180 1 of the prior art systems that you've listed in your 1 Q Can you turn to the section of your report 2 report would be commercially acceptable alternatives beginning at paragraph 173 on page 52? 3 3 A Yes. to the Lawson version 9.0 systems? 4 A I don't know that. 4 Q And in that section through -- I guess it's 5 Q Lawson no longer provides maintenance and paragraph 179, that's a discussion relating to the 6 support for version 6.0 of its procurement software, TV/2 system; is that correct? 7 7 does it? A Yes. 8 8 A I don't -- I don't know one way or another. Q Now this TV/2 system, that was a search 9 9 Q How much would it cost Lawson to replace program; is that correct? 10 its customers' 9.0 systems with 6.0 systems? 10 A Well, I mean, its fundamental objective was 11 A I -- I haven't even begun to think about 11 to facilitate search. The documents that described 12 that. Never came up. 12 TV/2 talk about ways of integrating that search with 13 13 Q Can you refer to paragraphs 107 through 116 other things such as sales and service systems. 14 14 of your report? Q But TV/2 -- the TV/2 system that you rely 15 A Yes. 15 on for your opinions as sold by IBM, that was just a Q In those paragraphs you describe at some 16 search program, right? 16 length some systems that were used by AHSC and 17 17 A Well --18 Baxter Healthcare at various time periods; is that 18 MS. STOLL-DEBELL: Objection, form. 19 accurate? 19 THE WITNESS: -- I -- I'm -- I don't think 20 20 A Yes. that's an accurate characterization. For example, 21 if you look at paragraph 178, TV/2 was designed to 21 Q Confirm for me that you haven't relied on

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store multiple tech- -- technical documents such as

22

these systems as providing a bases for any of your